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5 Attorneys for Plaintiff and Counterdefendant,
AT&T CORPORATION

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8 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION

9
10 AT&T CORPORATION,
11 Plaintiff,
12 v.
13 DATAWAY INC. and dba DATAWAY
DESIGNS,
14 Defendants.
15
16 AND RELATED COUNTERCLAIM.

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}) Case No. C07-02440 MMC
}) NOTICE OF MOTION AND MOTION
TO DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN
BE GRANTED
}) [F.R.C.P., Rule 12(b)(6)]
}) DATE: December 7, 2007
TIME: 9:00 a.m.
CTRM: 7

29 PLEASE TAKE NOTICE that at 9:00 a.m. on December 7, 2007 in Courtroom 7 of
30 this Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, the motion
31 of Plaintiff and Counterdefendant AT&T Corporation to dismiss the first, second, third, and
32 fifth claims for relief of the Counterclaim of Defendant and Counterclaimant Dataway Inc.

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1 and dba Dataway Designs (Docket No. 31) for failure to state a claim upon which relief can
2 be granted will be brought on for hearing pursuant to Federal Rules of Civil Procedure, Rule
3 12(b)(6).

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5 DATED: November 5, 2007

AIRES LAW FIRM

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By:


Timothy Carl Aires, Esq.
Attorney for Plaintiff,
AT&T CORPORATION

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PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF ORANGE
23 I, Timothy Carl Aires, am employed in the aforesaid county, State of California; I am
4 over the age of eighteen years and not a party to the within action; my business address is:
5 180 Newport Center Drive, Suite 260, Newport Beach, California 92660.
67 On November 5, 2007, I served the document entitled: *Notice of Motion and Motion*
8 *to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted* on all interested
9 parties in this action by placing a true and correct copy thereof, enclosed in a sealed
10 envelope, addressed as follows:11 Anne Leith-Matlock, Esq. (anne-leith@matlocklawgroup.com)
12 Matlock Law Group, PC
13 961 Ygnacio Valley Blvd.
14 Walnut Creek, CA 94596

15 (check applicable paragraphs)

16 X (BY MAIL IN THE ORDINARY COURSE OF BUSINESS) I am readily familiar with the
17 business practice for collection and processing of correspondence for mailing with the U.S.
18 Postal Service and the fact that correspondence would be deposited with the U.S. Postal
19 Service that same day in the ordinary course of business; On this date, the above-named
20 correspondence was placed for deposit at Newport Beach, CA and placed for collection and
21 mailing following ordinary business practices.22 – (BY PERSONAL SERVICE) I caused such document to be served by hand on the
23 addressee.24 – (BY EXPRESS SERVICE) I caused such document to be deposited in a box or other facility
25 regularly maintained by the express service carrier or delivered to an authorized courier or
26 driver authorized by the express service carrier to receive documents, in an envelope or
27 package designated by the express service carrier with delivery fees paid or provided for,
28 addressed to the person on whom it is to be served.29 – (State) I certify (or declare) under penalty of perjury under the laws of the State of California
30 that the foregoing is true and correct.31 X (Federal) I declare (or certify, verify or state) under penalty of perjury that the
32 foregoing is true and correct, and that I am employed in the office of a
33 member of the bar of this Court at whose direction the service was made.

34 Executed on November 5, 2007

35 _____ Signature of Declarant